

LSK&D #: 373-7730 / 926282

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ERROL DICKSON,

Plaintiff,

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME
DEPOT,

Defendant.
-----X

Index No.: 18858/07

NOTICE OF REMOVAL

PLEASE TAKE NOTICE, that on the 2nd day of October 2007, defendant, HOME DEPOT U.S.A., INC., filed a Petition for Removal, a copy of which is annexed hereto, with the United States District Court for the Southern District of New York

Dated: New York, New York
October 2, 2007

Yours, etc.

LESTER SCHWAB KATZ & DWYER, LLP



Robert N. Dunn
Attorneys for Defendant
HOME DEPOT U.S.A., INC. s/h/a "HOME
DEPOT U.S.A., INC. D/B/A HOME DEPOT"
120 Broadway
New York, New York 10271
(212) 964-6611

TO:

DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
625 Middle Country Road
Suite 100
Coram, New York 11727
Attorneys for Plaintiff
(631) 698-2000
Fax: (631) 698-4943

JS 44C/SDNY
REV. 12/2005**JUDGE HOLWELL****CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (For more detailed instructions, see separate instruction sheet.)

ERROL DICKSON

HOME DEPOT U.A., INC.

PLAINTIFFS

DEFENDANTS

Donald W. Leo, Jr., Esq.

Robert N. Dunn, Esq.

ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

DONALD LEO & ASSOCIATES, P.C.

LESTER SCHWAB KATZ & DWYER, LLP

625 Middle Country Road

120 Broadway

Suite 100

New York, NY 10271

Coram, New York 11727

(212) 964-6611

(631) 698-2000

Attorneys for Defendant

Attorneys for Plaintiff

OCT 03 2007

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 U.S.C. §1441 – Diversity

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed . No. ☐ Yes ☐ If yes, give date _____ & Case No. _____**NATURE OF SUIT**(PLACE AN ☒ IN ONE BOX ONLY)**ACTIONS UNDER STATUTES****CONTRACT**

- ☐ 110 INSURANCE
☐ 120 MARINE
☐ 130 MILLER ACT
☐ 140 NEGOTIABLE INSTRUMENT
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT
☐ 151 MEDICARE ACT
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL. VETERANS)
☐ 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS
☐ 160 STOCKHOLDERS SUIT
☐ 190 OTHER CONTRACT
☐ 195 CONTRACT PRODUCT LIABILITY
☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
☐ 315 AIRPLANE PRODUCT LIABILITY
☐ 320 ASSAULT, LIBEL & SLANDER
☐ 330 FEDERAL EMPLOYERS LIABILITY
☐ 340 MARINE
☐ 345 MARINE PRODUCT LIABILITY
☐ 350 MOTOR VEHICLE
☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
☒ 360 OTHER PERSONAL INJURY

ACTIONS UNDER STATUTES**TORTS****PERSONAL INJURY**

- ☐ 362 PERSONAL INJURY MED-MALPRACTICE
☐ 365 PERSONAL INJURY PRODUCT LIABILITY
☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
☐ 371 TRUTH IN LENDING
☐ 380 OTHER PERSONAL PROPERTY
☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

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- ☐ 610 AGRICULTURE
☐ 620 FOOD & DRUG
☐ 625 DRUG RELATED SEIZURE OF PROPERTY
☐ 21 USC 881
☐ 630 LIQUOR LAWS
☐ 640 R.R. TRUCK
☐ 650 AIRLINE REGS
☐ 660 OCCUPATIONAL SAFETY/HEALTH
☐ 690 OTHER

LABOR

- ☐ 710 FAIR LABOR STANDARDS
☐ 720 LABOR/MGMT RELATIONS
☐ 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
☐ 740 RAILWAY LABOR ACT
☐ 790 OTHER LABOR LITIGATION
☐ 791 EMPL. RET. INC. SECURITY ACT

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- ☐ 422 APPEAL (801)
☐ 423 WITHDRAWAL 28USC
PROPERTY RIGHTS
☐ 820 COPYRIGHT
☐ 830 PATENT
☐ 840 TRADEMARK

SOCIAL SECURITY

- ☐ 861 MIA (1396ff)
☐ 862 BLACK LUNG (923)
☐ 863 DIWC (405(g))
☐ 863 DIWW (405(g))
☐ 864 SSID TITLE XVI
☐ 865 RSI (405 (g))

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☐ 410 ANTI-TRUST
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☐ 460 DEPORTATION
☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
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☐ 490 CABLE/SATELLITE TV
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☐ 850 SECURITIES/COMMODITIES EXCHANGE
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☐ 891 AGRICULTURAL ACTS
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☐ 220 FORECLOSURE
☐ 230 RENT LEASE & EJECTMENT
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☐ 290 ALL OTHER REAL PROPERTY

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☐ 530 HABEAS CORPUS
☐ 535 DEATH PENALTY
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☐ 550 CIVIL RIGHTS
☐ 555 PRISON CONDITION

(Check if demanded in complaint):

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing explanation of why cases are deemed related.

(SEE REVERSE / NEXT PAGE)

ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1. Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3. Remanded from Appellate Court
 ☐ 4. Reinstated or Reopened
 ☐ 5. Transferred from (Specify District)
 ☐ 6. Multidistrict Litigation
 ☐ 7. Appeal to District Judge from Magistrate Judge Judgement
- ☐ 2b. Removed from State Court AND at least one party is a pro se litigant

BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1. U.S. PLAINTIFF
 ☐ 2. U.S. DEFENDANT
 ☐ 3. FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4. DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW
(28 USC 1322,1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an (X) in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	PTF <input type="checkbox"/> 2	DEF <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4	FOREIGN NATION	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY (IES) (Calendar Rule 4(A))

DONALD LEO & ASSOCIATES, P.C.
625 Middle Country Road
Suite 100
Coram, New York 11727
(631) 698-2000

DEFENDANT(S) ADDRESS(ES) AND COUNTY (IES) (Calendar Rule 4 (A))

LESTER SCHWAB KATZ & DWYER, LLP
120 Broadway
New York, NY 10271
(212) 964-6611

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check One: THIS ACTION SHOULD BEEN ASSIGNED TO:
(DO NOT check either box if this is a PRISONER PETITION.)

☐ WHITE PLAINS ☒ FOLEY SQUARE

DATE 10/2/07 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT
☐ NO
☒ YES (DATE ADMITTED Mo 4 Yr 1989)
Attorney Bar Code # 9193

RECEIPT#

Magistrate Judge is so designated by Clerk of the Court
MAG. DOLINGER

Magistrate Judge _____ is so Designated.

James M. Parkison, Clerk of Court by _____ Deputy Clerk, DATED

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

LSK&D #: 37357760 / 926882

JUDGE HOLWELL
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ERROL DICKSON,

Plaintiff,

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME
DEPOT,

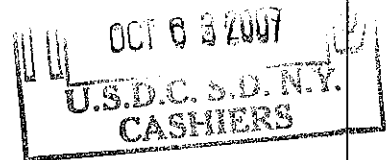
Defendant.
-----X

07 CIV 8558
Docket No.:

**PETITION FOR
REMOVAL**

Assigned To:

**TRIAL BY JURY
DEMANDED**



**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

The Petition of the defendant, HOME DEPOT U.S.A., INC., respectfully shows:

1. On or about August 22, 2007, an action was commenced against the Petitioners in the Supreme Court, State of New York, County of Bronx, which is entitled Errol Dickson v. Home Depot U.S.A., INC. A copy of the Summons and Complaint is annexed hereto as Exhibit "A".

2. The above-described action is one in which the Court has original jurisdiction under the provision of 28 U.S.C. §1332 as one that may be removed to this Court, pursuant to 28 U.S.C. §1441, in that it is a civil action and upon information and belief, the matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs, and is between citizens of different states.

3. Plaintiff resided in the Bronx, New York, as is noted on the Summons included in attachment Exhibit "A".


4. HOME DEPOT U.S.A., INC. is a Delaware corporation with its principal place of business in the State of Georgia.

WHEREFORE, HOME DEPOT U.S.A., INC. prays that the action now pending against them in the Supreme Court of the State of New York, County of the Bronx, be removed therefrom to this Court.

Dated: New York, New York
October 2, 2007

Yours, etc.

LESTER SCHWAB KATZ & DWYER, LLP



Robert M. Dunn (RND-9193)
Attorneys for Defendant
HOME DEPOT U.S.A., INC. s/h/a "HOME
DEPOT U.S.A., INC. D/B/A HOME DEPOT"
120 Broadway
New York, New York 10271
(212) 964-6611


TO:

DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
625 Middle Country Road
Suite 100
Coram, New York 11727
Attorneys for Plaintiff
(631) 698-2000
Fax: (631) 698-4943

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

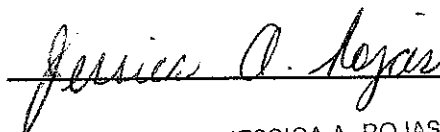
ROBERT N. DUNN, being duly sworn, according to law, deposes and says that he is one of the attorneys for the within named Petitioner HOME DEPOT U.S.A., INC. s/h/a "HOME DEPOT, INC. D/B/A HOME DEPOT".

That he has read the foregoing Petition for Removal and that the statements therein are true in substance and to his knowledge.



ROBERT N. DUNN (RND-9193)
Attorneys for Defendant
HOME DEPOT U.S.A., INC. s/h/a "THE HOME
DEPOT, INC."
120 Broadway
New York, New York 10271
(212) 964-6611

Sworn to before me this
2nd day of October, 2007



JESSICA A. ROJAS
Notary Public, State of New York
No. 01804997833
Qualified in New York County
Commission Expires July 30, 20 10

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ERROL DICKSON

Plaintiff(s),

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT

Defendant(s).
-----X

Index No.: 18858/07
Date Purchased: 8/22/07
SUMMONS

Plaintiff designates Bronx
County as the place of trial.


The basis of venue is:
Plaintiff's Residence

Plaintiff resides at:
2916 Bruner Avenue
Bronx, NY 10469
County of Bronx

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Coram, New York
August 15, 2007



DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
Attorneys for Plaintiff(s)
ERROL DICKSON
625 Middle Country Road
Suite 100
Coram, New York 11727
(631) 698-2000
Our File No. 002595

TO:

HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT
1806 East Gunhill Road
Bronx, NY 10469

HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT
2455 Paces Ferry Road NW
Atlanta, Georgia 30339-4053

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ERROL DICKSON

Plaintiff(s),

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT

Defendant(s).

Index No.: 18858/07

Date Purchased: 8/22/07

VERIFIED COMPLAINT

Plaintiff, by his attorneys, **DONALD LEO & ASSOCIATES, P.C.**, complaining of the Defendant, respectfully alleges, upon information and belief:

1. That at the times hereinafter mentioned, Plaintiff **ERROL DICKSON** was, and still is, resident of the County of Bronx, State of New York.
2. That at all times hereinafter mentioned, the Defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** was and still is a foreign corporation duly authorized to do business in the State of New York, with its principal executive office located at 2455 Paces Ferry Road NW, Atlanta, Georgia 30339-4053.
3. That at all times hereinafter mentioned, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** owns, operates, maintains and controls numerous places of business throughout the State of New York in general, and the County of Bronx in particular which are known as **HOME DEPOT** with one of its stores specifically located at 1806 East Gunhill Road, Bronx New York 10469.

4. That at all times hereinafter mentioned, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** was, and still is, a resident of the State of Georgia.

5. That at all times hereinafter mentioned, the Defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** owned and or leased the premises and appurtenances and fixtures thereto, located at **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT**, 1806 East Gunhill Road, Bronx, New York 10469.

6. That at all times hereinafter mentioned, and upon information and belief, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** operated the aforesaid premises.

7. That at all times hereinafter mentioned, and upon information and belief, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** managed the aforesaid premises.

8. That at all times hereinafter mentioned, and upon information and belief, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** controlled the aforesaid premises.

9. That at all times hereinafter mentioned, and upon information and belief, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** maintained the aforesaid premises.

10. That at all times hereinafter mentioned, and upon information and belief, the defendant **HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT** performed repairs at the aforesaid premises.

11. On August 26, 2004 Plaintiff **ERROL DICKSON** was lawfully on the aforesaid premises.

12. That on August 26, 2004, while Plaintiff **ERROL DICKSON** was examining wood products on the lower shelves of one of the defendant's displays in the store, an employee of the defendants began stocking the shelves above the plaintiff for the purpose of replenishing new stock.

13. While the plaintiff, Errol Dickson was examining the wood products on the lower shelf, he was caused to sustain serious and permanent injuries when a piece of wood from one of the upper shelves struck him on the head and shoulder.

14. Upon information and belief, the aforesaid accident was caused by the active negligence of the defendants employee who was stocking the shelves above the plaintiff.

15. The above mentioned occurrence and the results thereof, were caused by the joint, several and concurrent negligence of the Defendant and/or said Defendant's agents, servants, employees and/or licensees in the ownership, operation, management, supervision, maintenance and control of the aforesaid premises.

16. That, upon information and belief, Defendant had actual notice of this defective condition for at least fifteen (15) days prior to August 26, 2004.

17. That, upon information and belief, Defendant had constructive notice of this defective condition for at least fifteen (15) days prior to August 26, 2004.

18. The aforesaid accident was caused solely and wholly by and through the carelessness and negligence of the defendant.

19. That no negligence on the part of the Plaintiff contributed to the occurrence alleged herein in any manner whatsoever.

20. That by reason of the foregoing, Plaintiff **ERROL DICKSON** was caused to sustain serious injuries and to have suffered pain, shock and mental anguish; that these injuries and their effects will be permanent; and as a result of said injuries Plaintiff has been caused to incur, and will continue to incur, expenses for medical care and attention; and, as a further result, Plaintiff was, and will continue to be, rendered unable to perform Plaintiff's normal activities and duties and has sustained a resultant loss therefrom.

21. That this action falls within one or more of the exemptions set forth in CPLR §1602.


22. That by reason of the foregoing, Plaintiff **ERROL DICKSON** was damaged in a sum which

exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff(s) demand(s) judgment against the Defendants herein, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: Coram, New York
August 15, 2007

Yours, etc.



DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
Attorneys for Plaintiff(s)
ERROL DICKSON
625 Middle Country Road
Suite 100
Coram, New York 11727
(631) 698-2000
Our File No. 002595

ATTORNEY'S VERIFICATION

DONALD W. LEO, JR., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury: I am an attorney at DONALD LEO & ASSOCIATES, P.C., attorneys of record for Plaintiff(s), Errol Dickson. I have read the annexed COMPLAINT and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Plaintiff(s) is/are not presently in the county wherein I maintain my offices.

DATED: Coram, New York
August 15, 2007


DONALD W. LEO, JR.

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ERROL DICKSON

Plaintiff(s),

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT

Defendant(s).

SUMMONS & VERIFIED COMPLAINT

DONALD LEO & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)
625 Middle Country Road
Suite 100
Coram, New York 11727
Phone: (631) 698-2000
Fax: (631) 698-4943
E-mail: office@leoassoc.com

TO:

EXHIBIT "B"

LSK&D #: 373-7730 /926213

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ERROL DICKSON,

Plaintiff,

Index No.: 18858/07

-against-

VERIFIED ANSWER

HOME DEPOT U.S.A., INC. D/B/A HOME
DEPOT,

Defendant.
-----X

Defendant, HOME DEPOT U.S.A., INC. s/h/a "HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT", by its attorneys, LESTER SCHWAB KATZ & DWYER, LLP, answering plaintiff's Verified Complaint, respectfully state as follows:

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "11" and "12" of the Verified Complaint.

2. Denies each and every allegation contained in paragraph "3" of the Verified Complaint except admits that at all times hereinafter mentioned, the defendant HOME DEPOT U.S.A., INC. has numerous places of business throughout the State of New York in general, and the County of Bronx in particular which are known as HOME DEPOT with one of its stores specifically located at 1806 East Gunhill Road, Bronx, New York 10469 and further begs leave to refer all questions of law to the Court at the trial of this action.

3. Denies each and every allegation contained in paragraph "4" of the Verified Complaint except admits that at all times hereinafter mentioned, the defendant HOME DEPOT U.S.A. D/B/A HOME DEPOT has it principal place of business in the

State of Georgia and further begs leave to refer all questions of law to the Court at the trial of this action.

4. Denies each and every allegation contained in paragraph "5" of the Complaint except admits that at all times hereinafter mentioned, the Defendant HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT leased the premises, located at HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT, 1806 East Gunhill Road, Bronx, New York 10469.

5. Denies each and every allegation contained in paragraphs "6", "7", "8", "9", "10" and "21" of the Verified Complaint, but begs leave to refer all questions of law to the Court at the trial of this action.

6. Denies each and every allegation contained in paragraphs "13", "14", "15", "16", "17", "18", "19", "20" and "22" of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

7. That any injuries and/or damages sustained by the plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of each plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of this answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

8. That by entering into the activity in which each plaintiff was engaged at the time of the occurrence set forth in the Verified Complaint, each plaintiff knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiffs herein as alleged in the Verified Complaint arose from and were caused by reason of

such risks voluntarily undertaken by plaintiff in their activities and such risks were assumed and accepted by them in performing and engaging in said activities

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

9. The Verified Complaint of the plaintiff fails to state a cause of action cognizable in law or equity against this answering defendant and the Complaint must therefore be dismissed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

10. The liability of this defendant, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

11. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

12.. In the event plaintiff recovers a verdict or judgment against this defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff(s), in whole or in part, for any past or future claimed economic loss, from any

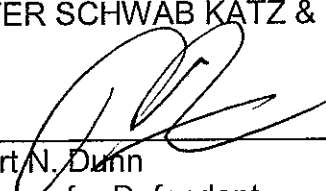
collateral source such as insurance, social security, workers' compensation or employee benefit programs.

WHEREFORE, the answering defendant demands judgment dismissing the verified complaint of the plaintiff, together with the attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
October 2, 2007

Yours, etc.

LESTER SCHWAB KATZ & DWYER, LLP



Robert N. Dunn
Attorneys for Defendant
HOME DEPOT U.S.A., INC. s/h/a "HOME
DEPOT U.S.A., INC. D/B/A HOME DEPOT"
120 Broadway
New York, New York 10271
(212) 964-6611

TO:

DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
625 Middle Country Road
Suite 100
Coram, New York 11727
Attorneys for Plaintiff
(631) 698-2000
Fax: (631) 698-4943

ATTORNEY'S VERIFICATION

The undersigned affirms the following statement to be true under the penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules.


That he is a member of the firm of LESTER SCHWAB KATZ & DWYER, LLP, attorneys for defendant, HOME DEPOT U.S.A., INC. s/h/a "HOME DEPOT U.S.A., INC. D/B/A HOME DEPOT".

That he has read the foregoing document and knows the contents thereof, and that the same is true to the knowledge of your deponent except as to the matters therein alleged upon information and belief and that as to those matters he believes them to be true.

That the reason why this affirmation is being made by your deponent and not by the said defendant is that said corporation does not maintain an office with an officer having knowledge of the facts in the county where your affiant's firm maintains its offices.

That the source of your deponent's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with said corporation.

Dated: New York, New York
October 2, 2007




Robert N. Dunn

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

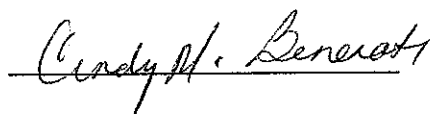
MARY E. MAGEE, being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years and resides in Queens County. That on October 4, 2007, she served the within **NOTICE OF REMOVAL, CIVIL COVER SHEET AND PETITION FOR REMOVAL** upon:

DONALD W. LEO, JR.
DONALD LEO & ASSOCIATES, P.C.
625 Middle Country Road
Suite 100
Coram, New York 11727
Attorneys for Plaintiff
(631) 698-2000
Fax: (631) 698-4943

by depositing a true copy of same securely enclosed in a post paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


MARY E. MAGEE

Sworn to before me this
4th day of October, 2007



CINDY M. BENENATI
COMMISSIONER OF DEEDS
CITY OF NEW YORK, NO. 2-6219
COMMISSION EXPIRES MARCH 1, 2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ERROL DICKSON,

Index No.: 18858/07

Plaintiff,

-against-

HOME DEPOT U.S.A., INC. D/B/A HOME
DEPOT,

Defendant.
-----X

**NOTICE OF REMOVAL, CIVIL COVER SHEET
AND PETITION FOR REMOVAL**

LESTER SCHWAB KATZ & DWYER, LLP

ATTORNEYS FOR

Defendant

**HOME DEPOT U.S.A., INC. S/H/A HOME
DEPOT U.S.A., INC. D/B/A HOME DEPOT**

120 BROADWAY
NEW YORK, N.Y. 10271-0071
(212) 964-6611
FAX: (212) 267-5916

ORIGINAL-WHITE

DUPLICATE-YELLOW

TRIPPLICATE-PINK

RECEIPT FOR PAYMENT
 UNITED STATES DISTRICT COURT
 for the
 SOUTHERN DISTRICT OF NEW YORK

E 628597

RECEIVED FROM

at
 Lester Schnab/Katz
 07/08/558
 Complaint

Fund
 6855XX
 604700

508800
 085000
 086900
 322340
 322350
 322360
 143500
 322380
 322386
 121000
 129900
 504100
 613300
 510000
 510100

Deposit Funds
 Registry Funds
 General and Special Funds
 Immigration Fees
 Attorney Admission Fees
 Filing Fees
 Sale of Publications
 Copy Fees
 Miscellaneous Fees
 Interest
 Recoveries of Court Costs
 Restitution to U.S. Government
 Conscience Fund
 Gifts
 Crime Victims Fund
 Unclaimed Monies
 Civil Filing Fee (1/2)
 Registry Fee

INVOICE #83036

DATE\TIME: 10/3/2007 10:53:44 AM
 CASHIER: LATECIA
 STATION: 01

1	COMPLAINT 4/06	\$350.00
	086900 \$60.	
	510000 \$190.00	
	086400 \$100.00	

GRAND TOTAL \$350.00

Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DEPUTY CLERK

DATE:	Cash	Check	M.O.	Credit
20				